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State of New York Public Employment Relations Board Decisions from January 24, 2005

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from January 24, 2005

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**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

MOHAMMAD SAIDIN,

Charging Party,

- and -

CASE NO. U-24198

UNITED FEDERATION OF TEACHERS,

Respondent,

- and -

**BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,**

Employer,

MOHAMMAD SAIDIN, *pro se*

**JAMES R. SANDNER (MELINDA G. GORDON of counsel), for
Respondent**

**DANIEL MACRAY, DIRECTOR OF LABOR RELATIONS AND COLLECTIVE
BARGAINING (ORINTHIA E. PERKINS of counsel), for Employer**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Mohammed Saidin to a decision of an Administrative Law Judge (ALJ) dismissing his improper practice charge which, as amended, alleged a violation of §209-a.2(c) of the Public Employees' Fair Employment Act (Act) by the United Federation of Teachers (UFT) when it did not properly conduct his grievance arbitration. The Board of Education of the City School District of the City

of New York (District) is made a statutory party to the proceedings pursuant to §209-a.3 of the Act.

EXCEPTIONS

Saidin excepts to the ALJ's decision on several grounds. We will address the principal exceptions that allege that the ALJ erred in her analysis of the facts and law.¹ UFT's response supports the ALJ's decision.

Based upon our review of the record and our consideration of the parties' arguments, we affirm the decision of the ALJ.

FACTS

We adopt the ALJ's findings of fact² and will reference only those facts relevant to our analysis and disposition of Saidin's exceptions.

Saidin was a teacher of English as a second language (ESL). He was last employed by the District as a regular substitute in September 1999 and worked in that capacity until January 31, 2000, when he was terminated. While employed in 1999, he was assigned to Martin Luther King High School to teach ESL, as well as a business class. On November 24, 1999, Terri Cuddy, Assistant Principal, English/ESL Department, observed Saidin teach a class. Cuddy issued a report dated December 15, 1999, that noted many problem areas and rated Saidin's lesson as unsatisfactory. Subsequently, on January 19, 2000, Robert R. Mastruzzi, the Superintendent's

¹ Saidin filed "cross-exceptions" to the ALJ's decision on November 19, 2004, based upon the allegations set forth in his exceptions. Since this material supplements his exceptions and it was filed beyond the time permitted to file his exceptions, it will not be considered on this appeal.

² 37 PERB ¶4574 (2004).

Designee, visited Saidin's class to observe his teaching method because Principal Ronald Williams Wells had advised him that he was contemplating terminating Saidin's employment. Mastruzzi issued his observation report on January 20, 2000 and Saidin acknowledged receipt of it on January 20, 2000. Mastruzzi gave him an unsatisfactory rating and made the recommendation that, if Saidin's employment was terminated by Wells, the decision to terminate Saidin should be supported by the Superintendent, Welton L. Sawyer.

Saidin filed grievances with the District objecting to both observation reports as unfair and inaccurate. The grievances were denied by the District at each of the steps preceding arbitration. The arbitration hearing was scheduled to be heard on January 6, 2003. Saidin met with Lynn Kilroy, UFT Advocate; Gary Rabinowitz, UFT Special Representative; and Howard Solomon, Director of UFT's Grievance Department on December 17, 2002, to discuss the upcoming arbitration hearing.

Saidin testified that the UFT representatives informed him at that meeting that at the arbitration hearing, only Article 21A (the provision of the collective bargaining agreement concerning letters in file) would be raised. Saidin told them that this was superficial and an unsatisfactory approach to his grievances as he felt other contractual provisions should also be raised. Saidin wanted the lack of a pre-observation conference raised and a violation of Article 8J of the contract alleged. He acknowledged that Kilroy threatened to stop the meeting because he refused to listen to her advice. He also acknowledged that his disagreement with UFT was over the fact that UFT was not going to argue at arbitration the sections of the collective bargaining agreement that Saidin thought were relevant.

Rabinowitz testified that he has been representing UFT members since 1986 and that he is currently responsible for all “letter-in-the-file” grievances scheduled for arbitration. Rabinowitz has been arbitration advocate for UFT for 17 years. He testified that UFT filed a Demand for Arbitration alleging only a violation of Article 21A of the collective bargaining agreement because it is the one article in the collective bargaining agreement that provides for the removal of documents placed in a teacher’s file.

Rabinowitz testified that Saidin was advised that the other articles were not relevant because UFT had lost previous attempts to inject other contract articles into similar hearings. Further, Saidin was told that no other contractual provisions could be raised at arbitration because they had not been included in the original grievance and had not been raised at the earlier steps of the grievance procedure. Rabinowitz also stated that the collective bargaining agreement provides that only UFT may file a Demand for Arbitration. As a result, UFT determines the theory of the arbitration.

At the arbitration hearing, Kilroy presented evidence to the arbitrator that the two evaluations of Saidin were unfair. Saidin testified and attempted to argue other articles of the collective bargaining agreement that he considered relevant. The arbitrator, however, limited his testimony to Article 21A. UFT was successful in the arbitration by convincing the arbitrator to delete certain negative words and sentences even though Saidin’s employment with the District was ultimately terminated because of the unsatisfactory classroom observations.³

³ Charging Party Exhibit #3.

DISCUSSION

In order to find that UFT violated its duty of fair representation, Saidin must establish that UFT's conduct was discriminatory, arbitrary or in bad faith.⁴ The ALJ found that Saidin failed to meet that standard of proof. We agree.

Saidin argues in his exceptions that, because UFT representatives failed to explain to him what constitutes unfairness under the precedent they relied upon, they were unable to effectively argue the issue before the arbitrator. Saidin acknowledged that his disagreement with UFT centered on the fact that UFT representatives, Kilroy and Rabinowitz, did not file the Demand for Arbitration containing the contract sections that he felt were relevant to the arbitration, such as Article 8J. He also conceded that his interpretation of the contract is different from UFT's representatives.

The record clearly establishes that UFT investigated Saidin's grievance and that Kilroy and Rabinowitz met with him to discuss the arbitration and the contract article involved. Although Saidin disputes that Kilroy and Rabinowitz explained the grounds upon which the arbitration was to proceed, the testimony is undisputed that Kilroy and Rabinowitz advised Saidin that only Article 21A was relevant to the arbitration. The ALJ credited Rabinowitz' testimony that he, Kilroy and Solomon met with Saidin prior to the arbitration to explain the contract provision involved in removing a letter from his file. The ALJ based her credibility resolution on Rabinowitz' demeanor and the consistency of his testimony and her findings that Saidin's testimony on cross-examination was

⁴ *Civil Service Empl. Ass'n v. PERB and Diaz*, 132 AD2d 430, 20 PERB ¶7024 (3d Dep't 1987), *affirmed on other grounds*, 73 NY2d 796, 21 PERB ¶7017 (1988).

evasive and his memory selective. After a fair reading of the testimony, we find no reason to disturb this finding.

We held in a previous charge brought by Saidin against the UFT for a breach of the duty of fair representation, that dissatisfaction with the employee organization's tactics or strategy in handling a grievance without more, does not establish a violation of the Act.⁵ Even if UFT erred in its analysis of Saidin's grievance, mere negligence or error in judgment on the part of an employee organization does not breach the duty of fair representation.⁶

Rabinowitz' testimony of UFT's procedure for the processing of a grievance to remove a letter in the file is unrefuted. The record is clear that UFT advised Saidin regarding both the merits of the grievance as filed and as Saidin wanted it to be argued at arbitration. We will not substitute our judgment for that of a union's regarding the filing and prosecution of grievances, since a union is given a wide range of reasonableness in this regard.⁷ We find, therefore, that UFT did not act in an arbitrary, discriminatory or bad faith manner in the prosecution of Saidin's grievance through arbitration.

Based on the foregoing, we deny Saidin's exceptions and we affirm the decision of the ALJ.

⁵ *United Fed'n of Teachers and Bd. of Ed. of the City Sch. of the City of New York*, 36 PERB ¶3042 (2003). See also *Local 1655, District Council 37, AFSCME, AFL-CIO*, 25 PERB ¶3008 (1992).

⁶ See also *Council 82, AFSCME, AFL-CIO and State of New York (Div. of Parole)*, 35 PERB ¶3023 (2002).

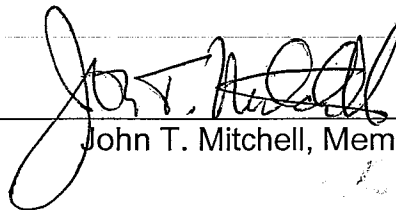
⁷ *New York State Court Clerks Ass'n*, 36 PERB ¶3041 (2003).

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is,
dismissed.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AFSCME, AFL-CIO,**

Petitioner,

- and -

CASE NO. C-5438

TOWN OF MALTA,

Employer.

GEORGE PIERCE, for Petitioner

DAVID R. MEAGER, for Employer

BOARD DECISION AND ORDER

On August 4, 2004, the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Town of Malta (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: Heavy Equipment Operator, Secretary - Highway Superintendent, Assistant Assessor, Account Clerk Typist (Assessor), Code Enforcement Officer, Maintenance Worker, Automotive Mechanic, Assistant Director of Parks and Recreation.

Excluded: All other titles.

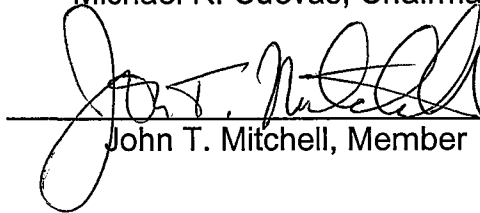
Pursuant to that agreement, a secret-ballot election was held on December 20, 2004, at which a majority of ballots were cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**RIVERHEAD CHARTER SCHOOL EMPLOYEES
ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-5436

RIVERHEAD CHARTER SCHOOL,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Riverhead Charter School Employees has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All certified personnel in the following titles: Lead Teacher, Senior Teacher, Teacher, Resident Teacher, Teacher Assistant, Student Support Manager, and Tutor.

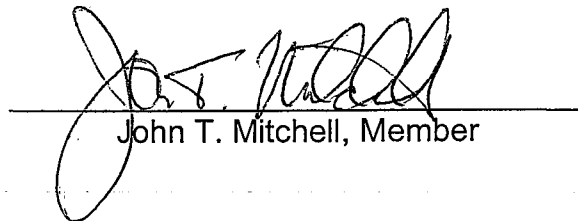
Excluded: All other personnel.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Riverhead Charter School Employees Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**TEAMSTERS LOCAL 294, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

CASE NO. C-5442

**COUNTY OF MONTGOMERY AND MONTGOMERY
COUNTY SHERIFF,**

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,¹

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Teamsters Local 294, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties

¹ The at-issue titles were in a unit represented by the Montgomery County Deputy Sheriffs Association. The Association has disbanded and disavows any representation rights to the titles covered by this decision.

and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All Correction Officers.

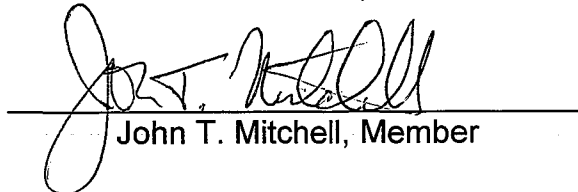
Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 294, International Brotherhood of Teamsters. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**NEW YORK STATE LAW ENFORCEMENT UNION,
COUNCIL 82, AFSCME, AFL-CIO,**

Petitioner,

-and-

CASE NO. C-5444

**COUNTY OF MONTGOMERY AND MONTGOMERY
COUNTY SHERIFF,**

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,¹

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the New York State Law Enforcement Union, Council 82, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties

¹ The at-issue titles were in a unit represented by the Montgomery County Deputy Sheriffs Association. The Association has disbanded and disavows any representation rights to the titles covered by this decision.

and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All Corrections Corporals, Sergeants and Lieutenants.

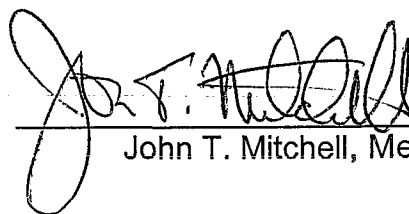
Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the New York State Law Enforcement Union, Council 82, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**TEAMSTERS LOCAL 317, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

CASE NO. C-5445

TOWN OF MEXICO,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Teamsters Local 317, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time and regular part-time and winter seasonal employees in the title: Motor Equipment Operator, Laborer, and Deputy Highway Superintendent.

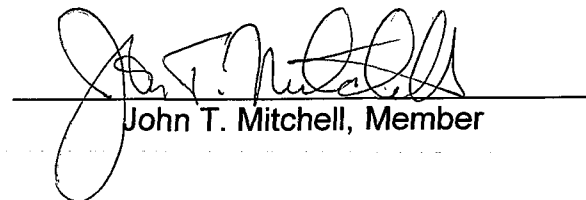
Excluded: All elected, clerical, non-winter seasonals, and managerial employees as defined by the Act.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 317, International Brotherhood of Teamsters. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**TEAMSTERS LOCAL 294, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

CASE NO. C-5448

TOWN OF SCHAGHTICOKE,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Teamsters Local 294, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time and regular part-time employees of the Highway Department.

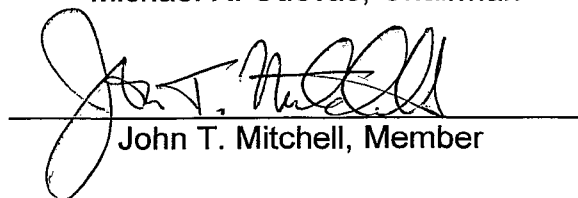
Excluded: Supervisors and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 294, International Brotherhood of Teamsters. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 24, 2005
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member